Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and	)	CC Docket No. 94-54
Interconnection Obligations	)	RM-8012
Pertaining to Commercial	)	
Mobile Radio Services	)	

To: The Commission

REPLY COMMENTS OF CELLULAR SERVICE, INC AND COMTECH, INC.

Cellular Service, Inc. ("CSI") and COMTECH, Inc. ("ComTech") hereby reply to the comments of the Cellular Telecommunications Industry Association ("CTIA"), GTE Service Corporation ("GTE"), Air Touch Communications ("Air Touch"), and McCaw Cellular Communications Inc. ("McCaw") (collectively, "the Carriers") filed in this proceeding with respect to the right of switch-based cellular resellers to interconnect with their facilities. As a general proposition the Carriers report the same arguments advanced in opposition to CSI's and ComTech's petition for reconsideration of the Second Report and Order in Docket 93-252. CSI and ComTech's reply in that latter proceeding (which was attached to their comments in the instant proceeding) provides an ample response to the Carrier's oppositions in the instant proceeding. A few points however, warrant emphasis.

First, the Carriers fail to raise any legal authority to justify a limited refusal to allow cellular resellers interconnection as facilities based carriers. CSI and ComTech have pointed out, and the Commission has acknowledged, Section 201 of the Communications Act governs a cellular reseller's right

to interconnection. The standard that the Commission must follow in making those determinations is well-settled: a carrier's request for interconnection must be deemed reasonable if the interconnection will service the carrier's need without harming the connecting carrier's network. Hush-a-Phone v. United States, 238 F.2d 266 (D.C. Cir. 1956), and Carterfone, 13 FCC2d 420, recon. denied, 14 FCC2d 571 (1968). See Comments of CIS and ComTech at 6 (citing Petition for Reconsideration and Reply to Oppositions of CSI and ComTech Inc. at Exhibits 1 and 2).

Second, the Carrier's opposition cannot be justified by the Commission's decision in Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd - (1994). In that case, the Commission stated that interconnection need not be ordered when competition among non-dominant carriers is likely to afford interconnection rights for competitors. However, in the instant matter celluar carriers are now classified as dominant, and even if they should become non-dominant at some later point in the future in the reseller mobile communication market (after PCS and ESMR nature), they will still have no incentive to allow interconnection by resellers. For their part, cellular resellers will not be able to secure alternative interconnection from other CMRS providers since the technology (for the moment) will not be compatible.

Third, contrary to the carriers' claims, Section 201 does not require a finding that the connecting carrier must exercise "bottleneck" control in order for the Commission to be able to

find that interconnection is reasonable. Indeed, the Commission's decision in the Telex Order See Interface of the International Telex Service With the Domestic Telex and TWX Services, 76 FCC 2d 61 (1980), as cited in the Comments of the Cellular Telecommunications Association ("CTIA"), demonstrates that such a finding is not required. See Comments of CTIA at 31-32. The distinctions with the Telex Order raised by CITA do nothing to change that point. To the extent that those distinctions are relevant at all, they go to the issue of whether inteconnection should be required in a particular case, -- not whether the Commission showed as a matter of general policy -- that cellular resellers do not have an interconnection right under Section 201. Further, no weight can be accorded to the carriers allegations that reseller interconnection there would cause technical harm to the carriers networks. In the unlikely event that the reseller and connecting carrier were unable to resolve any technical concerns during the course of good-faith negotiations, those technical issues could be brought before the Commission at a later time. At that time, the Commission could evaluate any carrier claim if specific harm based on specific facts. But the Commission will never have an opportunity to make evaluation if the Commission does not declare that cellular resellers have the right to interconnection under Section 201.

Fourth, the cost/benefit arguments raised by the carriers do not justify a finding by the Commission that resellers do not have a right to interconnection under Section 201. Section 201

provides that the carriers are entitled to receive reasonable compensation for the interconnection -- but they cannot be compensated for services which the reseller does not need.

As a practical matter, it is inconsiderable that resellers would spend millions of dollars on a switch that is incompatible. Indeed, CSI and ComTech have engaged a manufacturer of carrier switches to produce a reseller switch in order to avoid technical harm to the carrier.

Finally, the Commission should not loose sight of inherent inconsistency in the carrier's arguments. On the one hand, they tout the benefits of deregulation and market place forces in opposing the California petition in PR Docket 94-SP3; to impose regulatory restraints imposed on the reseller's right to compete. The carriers cannot have it both ways. If the resellers switch fails to enhance competition the resellers will pay the price in the market place.

In view of the foregoing the entire record herein, it is respectfully requested that the Commission reconsider its decision in the Second Report and Order and, upon reconsideration recognize the right of cellular reseller to interconnect switches with facilities-based cellular carriers and require parties to

engage in good faith negotiations to establish interconnection arrangements in accordance with established policies.

Respectfully submitted,

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October 13, 1994

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CERTIFICATE OF SERVICE

I hereby certify that this 13th day of October, 1994 that a copy of the foregoing comments has been hand-delivered on the following parties:

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